

SUPPLY AGREEMENT NO. 701

Standard Gasoline & Ultra-Low Sulfur Diesel

THIS **Standard Gasoline & Ultra-Low Sulfur Diesel Supply Agreement** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and Valero Marketing and Supply Company ("Supplier"), effective for all purposes upon execution by the City Manager or the City Manager's designee ("City Manager").

WHEREAS, Supplier has bid to provide Standard Gasoline & Ultra-Low Sulfur Diesel in response to Request for Bid No. 701 ("RFB"), which RFB includes the required scope of work and all specifications and which RFB and the Supplier's bid response are incorporated by reference in this Agreement as Exhibits 1 and 2, respectively, as if each were fully set out here in its entirety.

NOW, THEREFORE, City and Supplier agree as follows:

1. **Scope.** Supplier will provide Standard Gasoline & Ultra-Low Sulfur Diesel in accordance with the attached Scope of Work, as shown in Attachment A, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety. "Goods," "Products", and "Supplies", as used in this Agreement, refer to and have the same meaning.
2. **Term.** This Agreement is for 12 months. This Agreement includes an option to extend the term for up to two additional 12-month periods ("Option Period"), provided, the parties do so prior to expiration of the original term or the then-current Option Period. The decision to exercise the option to extend the term of this Agreement is, at all times, within the sole discretion of the City and is conditioned upon the prior written agreement of the Supplier and the City Manager.
3. **Compensation and Payment.** The total value of this Agreement is not to exceed \$2,999,174.78, subject to approved extensions and changes. Payment will be made for goods delivered and accepted by the City within 30 days of acceptance, subject to receipt of an acceptable invoice. All pricing must be in accordance with the attached Bid/Pricing Schedule, as shown in Attachment B, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.
4. **Contract Administrator.** The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under

this Agreement, including deductions for non-performance and authorizations for payment. The City's Contract Administrator for this Agreement is as follows:

Erlinda Klubertanz
Fleet Maintenance Dept.
361-826-1903
Email: Erlinda@cctexas.com

5. **Insurance.** Intentionally deleted.
6. **Purchase Release Order.** There will not be any purchase orders issued to Supplier under this Agreement; instead electronic payment cards ("fleet credit cards") will be issued to the City by the Supplier. Supplier agrees that the Program Participants will honor fleet credit cards issued by Supplier under this Agreement at all Commercial Stations for the purchase of Products from the Program Participants (as such terms "Program Participants" and "Commercial Stations" are discussed in Section 12 of this Agreement). The City is responsible for reimbursing Supplier for all Products purchased using the fleet credit cards at the prices set forth in this Agreement.
7. **Inspection and Acceptance.** All Products will be deemed accepted by the City upon delivery into the vehicle at the relevant Program Participant's Commercial Station and, upon delivery, the City is responsible for reimbursing Supplier for all Products purchased at the prices set forth in this Agreement.
8. **Warranty.** Supplier makes no warranties, express or implied, including the warranty of merchantability and that of fitness for a particular purpose. In no event, regardless of negligence, is either party liable for punitive damages.
9. **Quality/Quantity Adjustments.** Any quantities indicated on the Bid/Pricing Schedule are estimates only and do not obligate the City to order or accept more than the City's actual requirements nor do the estimates restrict the City from ordering less than its actual needs during the term of the Agreement and including any Option Period. Substitutions and deviations from the City's product requirements or specifications are prohibited without the prior written approval of the Contract Administrator
10. **Non-Appropriation.** The continuation of this Agreement after the close of any fiscal year of the City, which fiscal year ends on September 30th annually, is subject to appropriations and budget approval specifically covering this Agreement as an expenditure in said budget, and it is within the sole discretion of the City's City Council to determine whether or not to fund this

Agreement. The City does not represent that this budget item will be adopted, as said determination is within the City Council's sole discretion when adopting each budget.

- 11. Independent Contractor.** Supplier will perform the work required by this Agreement as an independent contractor and will furnish such products in its own manner and method, and under no circumstances or conditions will any agent, servant or employee of the Supplier be considered an employee of the City.
- 12. Fleet Program Description; Use of Subcontractors for Resale.** The City will purchase Valero-branded motor fuel from retail motor fuel operators ("Program Participants") at their retail stations ("Commercial Stations"). Supplier has provided the City with a list of subcontractors to whom it will sell Valero-branded fuel for resale ("Subcontractors") (as shown in Exhibit 3, which is incorporated by reference as if fully set out here in its entirety) at the Commercial Stations of Program Participants. Each Program Participant purchases that fuel from one of the Subcontractors. Each Subcontractor purchases the fuel from Supplier at the relevant supply terminal. Supplier will not sell any motor fuel to City directly but, rather, is agreeing to make available for purchase by the City from each Program Participant at a Commercial Station the following motor fuels (collectively, the "Products"): Regular reformulated gasoline ("RFG") E10; Mid-Grade RFG E10; Premium RFG E10; and Ultra-Low Sulfur Diesel ("ULSD") (with up to 5% biodiesel blended into it). Supplier will provide fleet credit card services in connection with these purchases by the City and, instead of Supplier offering its normal volume rebates to the City, Supplier has agreed that the ultimate price repaid to Supplier (in exchange for its extension of credit to purchase the Products from the Program Participants) is the pricing set forth in this Agreement. Finally, the terms and conditions attached to this Agreement as Attachment 2, labeled "Valero Fleet Card Services Credit Card Agreement," is part of this Agreement, with "We" referring to Supplier and "You" referring to City.
- 13. Amendments.** This Agreement may be amended or modified only by written change order signed by both parties. Change orders may be used to modify quantities as deemed necessary by the City.
- 14. Waiver.** No waiver by either party of any breach of any term or condition of this Agreement waives any subsequent breach of the same.
- 15. Taxes.** The Supplier covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other related taxes to which Supplier is subject by federal, state, and local law. Upon request, the City Manager

shall be provided proof of payment of these taxes within 15 days of such request.

- 16. Notice.** Any notice required under this Agreement must be given by fax, hand delivery, or certified mail, postage prepaid, and is deemed received on the day faxed or hand-delivered or on the third day after postmark if sent by certified mail. Notice must be sent as follows:

IF TO CITY:

City of Corpus Christi
Attn: Erlinda Klubertanz
Operations Manager
1201 Leopard Street, Corpus Christi, TX 78401
Fax: 361-826-4394

IF TO SUPPLIER:

Valero Marketing and Supply Company
Attn: Craig Schnupp
Vice President
One Valero Way, San Antonio, TX 78249
Fax: N/A

- 17. INDEMNIFICATION.** *Supplier shall fully indemnify and hold harmless the City and all of its officers, employees and agents ("Indemnitees") from any and all contractual and negligence claims, demands, causes of action, damages, losses, and expenses (including attorneys' fees) of whatever nature, character, or description that any person or entity has or may have directly arising out of the breach of this Agreement by Supplier or resulting from the negligent act, omission, misconduct, or fault of the Supplier or its employees and agents, except to the extent caused by the negligent act, omission, misconduct, or fault of the City or its employees and agents. The indemnification obligations of Supplier under this section shall survive the expiration or earlier termination of this Agreement.*

- 18. Termination.**

(A) The City Manager may terminate this Agreement for Supplier's failure to perform the work specified in this Agreement or to keep any required insurance policies in force during the entire term of this Agreement. The Contract Administrator must give the Supplier written notice of the breach and set out a reasonable opportunity to cure. If the Supplier has not cured within the cure period, the City Manager may terminate this Agreement immediately thereafter.

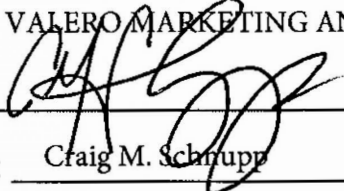
(B) Alternatively, the City Manager may terminate this Agreement for convenience upon 30 days advance written notice to the Supplier. The City Manager may also terminate this Agreement upon 24 hours written notice to the Supplier for failure to pay or provide proof of payment of taxes as set out in this Agreement.


19. **Assignment.** No assignment of this Agreement by the Supplier, or of any right or interest contained herein, is effective unless the City Manager first gives written consent to such assignment. The performance of this Agreement by the Supplier is of the essence of this Agreement, and the City Manager's right to withhold consent to such assignment is within the sole discretion of the City Manager on any ground whatsoever.
20. **Severability.** Each provision of this Agreement is considered to be severable and, if, for any reason, any provision or part of this Agreement is determined to be invalid and contrary to applicable law, such invalidity shall not impair the operation of nor affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part had been omitted.
21. **Order of Precedence.** In the event of any conflicts or inconsistencies between this Agreement, its attachments, and exhibits, such conflicts and inconsistencies will be resolved by reference to the documents in the following order of priority:
 - A. this Agreement and its attachments
 - B. the bid solicitation document, including addenda (Exhibit 1)
 - C. the Supplier's bid response (Exhibit 2)
 - D. the Supplier's list of Subcontractors (Exhibit 3)
22. **Certificate of Interested Parties.** Supplier agrees to comply with Texas Government Code Section 2252.908, as it may be amended, and to complete Form 1295 "Certificate of Interested Parties" as part of this Agreement.

- 23. Governing Law.** This Agreement is subject to all federal, State, and local laws, rules, and regulations. The applicable law for any legal disputes arising out of this Agreement is the law of the State of Texas, and such form and venue for such disputes is the appropriate district, county, or justice court in and for Nueces County, Texas.
- 24. Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior negotiations, arrangements, agreements and understandings, either oral or written, between the parties.

(SIGNATURE PAGE FOLLOWS)

SUPPLIER VALERO MARKETING AND SUPPLY COMPANY

Signature:  _____

Printed Name: Craig M. Schrupp  _____

Title: Vice President _____

Date: July 21, 2017 _____

CITY OF CORPUS CHRISTI

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Attached and Incorporated by Reference:

- Attachment A: Scope of Work
- Attachment B: Bid/Pricing Schedule
- Attachment 1: Price Sheet
- Attachment 2: Valero Fleet Services Credit Card Agreement

Incorporated by Reference Only:

- Exhibit 1: RFB No. 701
- Exhibit 2: Supplier's Bid Response
- Exhibit 3: List of Subcontractors (Program Participants)

ATTACHMENT A: SCOPE OF WORK

1 General Requirements/Background Information

The Contractor shall provide Standard Fuel and Ultra-Low Sulfur Diesel and a contingency plan as outlined in this Scope of Work.

2 Scope of work

A. Service Requirements

1. The Contractor must be able to provide the following:
 - a. A minimum of one fueling location in Zone 6
 - b. A minimum of two fueling locations in Zones 1, 2 and 5
 - c. A minimum of three fueling locations in Zones 3 and 4
 - d. Each site must have at least two fuel dispensers and be open 24 hours per day, every day of the year, including holidays (365 days per year).
 - e. Fueling locations outside the zone map, within Texas, for City employee when traveling and using account credit card.
2. Each station shall have branded 87 octane (Standard) gasoline or better and ultra-low sulfur diesel. Provide standard gasoline and ultra-low sulfur diesel fuel at each location.
 - a. Minimum Octane 87, branded – estimated usage for 12-month period, 1,096,856 gallons
 - b. Ultra-Low Sulfur Diesel (TX LED) – estimated usage for a 12-month period, 116,414 gallons
3. The Contractor must provide:
 - a. One credit card fuel account for the Contract Administrator of the City Fire Department.
 - b. Two credit card fuel accounts for the Contract Administrator of the City Fleet Maintenance Department.
 - c. One additional fuel account for the fuel transactions under the Contingency Plan, as per Contingency Plan mentioned in 4.2.B.
4. The Contractor must provide each Contract Administrator access, via internet and phone, to:
 - a. Update, add and delete credit cards

- b. Download account information, to include, but not limited to American Standard Code for Information Interchange (ASCH) downloadable formats.
5. When a city employee makes a transaction at the Contractor's fuel site using a fuel credit card, the Contractor must record the following information:
- a. Credit card account number
 - b. Transaction date and time
 - c. City vehicle unit number
 - d. Odometer reading at time of transaction
 - e. Total gallons purchased
 - f. Fuel product type
 - g. Purchase price
 - h. Employee number
 - i. Store location

B. Contingency Plan

1. Upon notice by the Contract Administrator, the Contractor will provide fueling services as a Contingency Plan to all City vehicles in the event that the City's Municipal Service Center Fuel Stations experience interruption of service due to repairs, crisis, or emergency.
2. When a City employee makes a fuel transaction at the Contractor's fuel site under the Contingency Plan, the City employee, with a city vehicle, will show the Contractor his/her City Employee Identification Card. The Contractor must record the following information:
 - a. Transaction date and time
 - b. City vehicle unit number
 - c. Odometer reading at time of transaction
 - d. Total gallons purchased
 - e. Fuel product type
 - f. Purchase price
 - g. Employee number
 - h. Store location
3. The Contractor must provide the City employee a printed transaction receipt and a copy of the documented information in Section 4.2.B.2.
4. Under the Contingency Plan, the Contractor must not dispense fuel to a City employee who does not present a City Employee Identification card and City vehicle.

C. Invoice and Interface Files

1. The Contractor must provide the Contract Administrators electronic files for each fuel account as follows:
 - a. M5 Standard Meter Interface Files, to be emailed daily, for the prior date's transactions, to the person designated by the Contract Administrator (attached M5 Standard Meter Interface File Layout for the Inbound File Layout).
 - b. M5 Commercial Fuel File, as invoiced by Contractor, to be emailed monthly to the Contract Administrator (attached M5 Commercial Interface File for the Inbound File Layout).
 - c. The Contractor must update the electronic file layouts, when notified by the Contract Administrator that a change is required.
2. The Contractor must deliver to the Contract Administrator via mail and make accessible via internet, a monthly invoice for each fuel account, delivered by the 15th of the month following the invoice period. Invoicing must be monthly and invoices must reflect the following:
 - a. Account number
 - b. Transaction date
 - c. City vehicle unit number
 - d. Odometer reading at time of transaction
 - e. Total gallons purchased
 - f. Fuel product type
 - g. Purchase price
 - h. Employee number
 - i. Store location

3 Additional Information

- A. Zone Map
- B. M5 Standard Meter File Layout
- C. M5 Commercial Fuel File Layout

[illegible]

M5 Standard Meter File Layout

Overview

This purpose of this interface is to provide a standard meter interface to update a unit's primary meter and meter date and meter2 information as required.

Implementation

The data required for this interface consists of these data elements:

Unit Number

Meter (the odometer, miles or hours, as entered/provided by the vehicle operator)

Meter Date (the date of the fuel transaction)

Format: Vehicle Number, meter, meter date

File Format

The inbound data file must be a comma, delimited text file. The file layout is shown below. All FleetFocus fields will reside in the Meter Journal (meter_jnl) table unless otherwise noted.

Field Description	Type	Note/Format
Vehicle No	Varchar2 - 10	If a unit number begins with '0', such as '0119', the '0' must be included. Four characters for vehicle, five or six characters for department
Meter	Numeric	Validation based expected period usage of the MCC for that Unit done by the MAXIMUS API
Meter TimeStamp	Date	Must be a valid date format - M/DD/YYYY 24HH:MM:SS

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M5 Commercial Fuel File Layout

A. File Layout of Incoming File

Field Description	Position	Sample Value	Note/Format
Trans Type	1	C	Default value 'C'
Trans No	2		optional
Year	6	2017	Ex. '2017'
Month	10	01	Ex. '01' for January
Day	12	05	Ex. '05'
Hour	14	23	Ex. '23' for 11 pm, military time required
Minute	16	03	Ex. '03'
Second	18	15	Ex. '15'
Unit No	20	7849	Four characters for vehicle, five or six characters for department
Unit Card	30		null, not required
Product No.	39	2	Ex. '2 ' for unleaded, '3 ' for diesel
Prod Qty	41	26.2	Ex. '26.2' or '-26.2', if credit
Meter	50	20569	To follow basic M5 meter checks
Meter2	59		null, not required
Credit Card	68		null, not required
Emp ID	78		null, not required
Emp Card	99		null, not required
Invoice	108	910831411611	No more than 12 characters
Location	120		null, not required

Fuel Tax	126	5.24	
Product Cost	135	45.2	
Base Price	144	1.7250	
Vendor No.	153		Contractor's Vendor number as designated by the City



Attachment B: Bid/Pricing Schedule

CITY OF CORPUS CHRISTI

BID FORM

PURCHASING DIVISION

RFB No. 701

Standard Gasoline & Ultra-Low Sulfur Diesel

Date: June 2, 2017

Bidder: Valero Marketing and Supply Co

Authorized
Signature:

[Signature]
Craig M. Schnupp, Vice President

1. Refer to "Instructions to Bidders" and Contract Terms and Conditions before completing bid.
 2. Quote your best price for each item.
 3. In submitting this bid, Bidder certifies that:
 - a. the prices in this bid have been arrived at independently, without consultation, communication, or agreement with any other Bidder or competitor, for the purpose of restricting competition with regard to prices.
 - b. Bidder is an Equal Opportunity Employer, and the Disclosure of Interest information on file with City's Purchasing office, pursuant to the Code of Ordinances, is current and true.
 - c. Bidder is current with all taxes due and company is in good standing with all applicable governmental agencies.
 - d. The Bidder must have operated continuously for a minimum of three years as an established firm in providing Commercial Fuel. Bidder must submit a copy of their Business License with their bid.
 - e. Bidder acknowledges receipt and review of all addenda for this RFB.
 - f. Provide a credit card for each qualifying vehicle or employee as designated by the Contract Administrator.
(Approximately 769 Vehicles and 1419 Employees.)
- Bidders are to indicate current rack price and O.P.I.S. Reports for each item bid as of April 17, 2017. To be purchased at Commercial Locations.

Item	Description	Unit	Estimated Qty		OPIS price as of 04/17/17		Total		Fixed Markup plus/minus fee		Extended Price
1	Standard 87 Octane Gasoline <*>	Gal	1,096,856	x	\$1.68	=	\$1,842,718.08	x	.09	=	\$1,941,435.12
2	Ultra-Low Sulfur Diesel (TX LED) <*>	Gal	116,414	x	\$1.60	=	\$186,262.40	x	.09	=	\$196,739.66
TOTAL											\$2,138,174.78

Contingency Plan - to address any issues resulting from a crisis, emergency or interruption of service at the City's Municipal Service Center Fuel Station.

Item	Description	Unit	Estimated Qty		OPIS price as of 04/17/17		Total		Fixed Markup plus/minus fee	Extended Price
3	Standard 87 Octane Gasoline <*>	Gal	200,000	x	\$1.68	=	\$336,000	x	.09	= \$354,000.00
4	Ultra-Low Sulfur Diesel (TX LED) <*>	Gal	300,000	x	\$1.60	=	\$480,000	x	.09	= \$507,000.00
TOTAL										\$861,000.00

<*> OPIS-Based Price Charged for Motor Fuels Purchased From Program Participants

The per gallon price repaid by the City to Bidder for Regular RFG E10 that is purchased from Program Participants by the City will be the following (the "Regular Gasoline Price"):

-OPIS Newsletter - Corpus Christi, TX Weekly* Branded Average Rack CBOB Ethanol 10% Regular 7.8 RVP** + Fixed Differential*** + fees****

The per gallon price repaid by the City to Bidder for Mid-Grade RFG E10 that is purchased from Program Participants by the City will be the following (the "Mid-Grade Gasoline Price"):

-OPIS Newsletter - Corpus Christi, TX Weekly* Branded Average Rack CBOB Ethanol 10% Mid-grade 7.8 RVP** + Fixed Differential*** + fees****

The per gallon price repaid by the City to Bidder for Premium RFG E10 that is purchased from Program Participants by the City will be the following (the "Premium Gasoline Price"):

-OPIS Newsletter - Corpus Christi, TX Weekly* Branded Average Rack CBOB Ethanol 10% Premium 7.8 RVP** + Fixed Differential*** + fees****

The per gallon price repaid by the City to Bidder for ULSD that is purchased from Program Participants by the City will be the following (the "Diesel Price"):

-OPIS Newsletter - Corpus Christi, TX Weekly* Branded Average Gross Ultra Low Sulfur Diesel LED + Fixed Differential*** + fees****

Certain Definitions:

* "Weekly Average" means for a given Monday (12am) through Sunday (11:59pm) period, the mean of the daily price quote for the prior Monday through Friday.

** OPIS will reflect the appropriate seasonal and blended component attributes such as RVP - Reid Vapor Pressure and Ethanol Blending

*** "Fixed Differential" means the "Unit Price" specified by Bidder for the relevant Product as "Fixed Differential Including Freight Costs" set forth on the Pricing Schedule to this Bid

**** "Fees" means the then actual fees resulting from: State of Texas Tax Rate; Petroleum Product Delivery (PPD) Fee, Leaking Underground Storage Tank (LUST) Fee, Federal Excise Tax (specific to fuel type) and Federal Oil Spill Tax Liability, and/or any other taxes or fees then applied to the sale of each relevant Product at the time of sale.]

Attachment 1: Price Sheet

Pricing:

- Valero will use Oil Price Information Service (OPIS) Plus pricing to determine fuel prices.
- Valero will use the OPIS Newsletter* Prices Published for the Corpus Christi, TX Weekly Average **Valero Branded Rack** for Unleaded, Mid-Grade, Premium, and ULSD(Ultra-Low Sulfur Diesel) LED. *OPIS will reflect the appropriate seasonal and blended component attributes such as RVP – Reid Vapor Pressure and Ethanol blending.
- Pricing can be verified by subscribing to the OPIS Newsletter Prices Published. Contact OPIS Customer Service at 877-210-4287.
- OPIS Newsletter Price Published for the Corpus Christi, TX Weekly Average **Valero Branded Rack**. Date of Newsletter: April 13, 2017 (Prices Published for Week of 04/10/2017 – 04/16/2017)

OPIS Rates for Week of 04/17/2016 through 04/23/2016

Price Date	Corpus Christi TX Br-Avg Br Gross CBOB Ethanol 10% Regular 9.0 RVP [USC/GAL]	Corpus Christi TX Br-Avg Br Gross CBOB Ethanol 10% Mid 9.0 RVP [USC/GAL]	Corpus Christi TX Br-Avg Br Gross CBOB Ethanol 10% Premium 9.0 RVP [USC/GAL]	Corpus Christi TX Br-Avg Br Gross Ultra- Low Diesel LED [USC/GAL]
OPIS Newsletter Dated 04/13/2017	1.6992	1.8526	2.1665	1.7116
+ Taxes (State Excise)	0.2000	0.2000	0.2000	0.2000
+Fixed Differential Including Freight	.0900	.0900	.0900	.0900
+Proposed Pricing**	1.9892	2.1426	2.4565	2.0016

**Per gallon

- Valero Fleet Services will waive the \$15 Report Fee for each account. Valero Fleet Services does not charge for replacement cards, account setup fees or renewal fees.

VALERO FLEET Program Fees

Account Set Up Fee	\$0.00
Monthly Card Charge	\$0.00
Monthly Accounting Fee	\$0.00
Replacement Card Fee	\$0.00 per card
Late Fee	Up to \$49.00
Reproduced Reports	\$0
General Research Fee	\$0.00 per hour
Regular Mail Fee	\$0.00
Expedited Shipping Fees	\$10.00
Return Payment Fee	Up to \$30.00
Reactivation Fee	\$0.00 per occurrence
Paper Delivery Fee ¹	\$15.00 per month for paper invoicing and reporting

Valero Fleet Services Credit Card Agreement/Retail Installment Credit Agreement

READ THIS AGREEMENT CAREFULLY AND KEEP A COPY FOR YOUR RECORDS

Definitions. In this Valero Fleet Services Credit Card Agreement ("Agreement"), the following words have the following meanings:

"Account" means the account issued to You, which is associated with an account number, and to which any charges made with the Card(s) issued will be accumulated for billing purposes.

"Card" or **"Cards"** means the Valero Fleet Services Credit Card(s) issued in connection with Your Account which can be used to access an Account.

"Fleet Contact Person" means the person(s) You select who is authorized to provide Us with the information necessary to establish and/or manage Your Account(s) and Card(s).

"Interest Charge" means a charge(s) You may owe, as provided in this Agreement, to use a Card(s) or Account for Purchases on a deferred payment basis.

"Merchant" means a Valero-branded location, including Valero, Beacon, or Shamrock stores or other retailers that accept Our Cards.

"Purchase" means the use of a Card or Account to buy goods or services from Merchants.

"Responsible Individual" or **"Principal"** means a person(s) authorized to enter into this Agreement and provide Us with the information necessary to establish and/or manage Your Account(s) and Card(s), including, but not limited to, appointing a Fleet Contact Person.

"Valero Fleet Card Discount Program" means the program which We may offer from time to time where discounts may be offered to an eligible Account. For more details about the Valero Fleet Card Discount Program, You can write to Us at PO Box 631, Amarillo, TX 79105-0631, or email Us at fleet@valero.com or call Us at 1-877-882-5376.

"Valero Fleet Discount Site" or **"Participating Merchant"** means a Merchant that agrees to participate in the Valero Fleet Card Discount Program.

"We", "Us", and "Our" means Valero Marketing and Supply Company (VMSC) or any servicer or subsequent holder of Your Account or the amounts due under Your Account, and all of their respective parents, subsidiaries, affiliates, predecessors, successors, assigns, agents, employees, officers, and directors, including, but not limited to, Valero Payment Services Company (VPSC).

"You" and "Your" means the entity, company or person(s) who applies for and accepts the Card or Cards issued on Your Account.

Definitions of additional terms may be contained in other paragraphs of this Agreement or in other documentation We may provide You. At Our election, such other documentation may from time to time be combined with this Agreement, constituting the entire Agreement.

Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all previous negotiations, commitments and writings. This Agreement is between You and Us and no other entity shall be deemed a party to this Agreement except as set forth in the Arbitration Provision. You agree that this Agreement governs the Account and Card(s) and their use by You or any person. You agree that a Fleet Contact Person or other designee may make decisions or provide information on Your behalf that is binding to You, a Responsible Individual or Principal under this Agreement. This Agreement, including the Fee Schedule, the Account Application You filed with Us, any agreements which secure or guaranty Your obligations under this



BEACON



At always, use your Valero Fleet Services Card at any of The Valero Family of Brands!

FTC 08/11

Agreement, any unique payment agreement, electronic payment agreement, enrollment forms and any amendments, modifications, substitutions or replacements of any of those documents, is a final expression of the credit agreement between You and Us and may not be contradicted by evidence of any alleged oral agreement. Except as expressly permitted in this Agreement, no modification of it is effective unless in writing and signed by You with acknowledgement and acceptance by Us. We may, at Our discretion, allow all, or a portion, of an existing agreement between Us to take precedence over this Agreement. If We do, We will acknowledge this in writing. Any terms different from this Agreement or contradictory to this Agreement that are set forth in a Purchase Order or other communication are expressly rejected and shall under no circumstances modify the terms of this Agreement. You represent and warrant to Us that this Agreement is valid, binding and enforceable against You in accordance with its terms and, if You are a corporation or other entity, that this Agreement has been duly authorized by all necessary action of Your governing body. You agree to provide any evidence of corporate (or other organizational) existence and authorization that We may reasonably request.

Customer Identification. Federal law requires Us to obtain, verify, and record information that identifies each person who opens an account, in order to help the government fight the funding of terrorism and money laundering activities. To process Your Account application, We must have Your legal name or Your business' legal name, its street address, and its taxpayer identification number. Also, if applicable, We must have the Responsible Individual's or Principal's name, street address, date of birth and other identifying information. We may ask for additional identifying documents from You as well.

Acceptance. You accept this Agreement (i) if You apply for, and Valero Marketing and Supply Company issues You, a Valero Fleet Services Credit Card(s), and (ii) if You use or permit the use of the Credit Card(s). If You do not wish to be bound by the terms and conditions of this Agreement, do not use the Card(s). Instead, cut the Card(s) in two and return them to Us with a written rejection of this Agreement and the Account.

Use of Card(s); Responsibility. We may issue Card(s) at Your request. You agree that You will destroy expired Card(s) or Card(s) for which a replacement Card(s) has been issued. All renewal Card(s) or any additional Card(s) You request will be subject to the terms of this Agreement as in effect at the time of that renewal or issuance. You may ask Us to: a) issue additional Card(s) or replacement Card(s); b) suspend or terminate Card(s); or c) change the authorized use or user(s) of Card(s). Card(s) may be used at Merchants. Some Merchants may choose to participate as a Valero Fleet Discount Site ("Participating Merchants"). Additionally, a Merchant may choose to participate in contract pricing or other agreement(s). We are not responsible for the Merchant or Participating Merchant's choice to participate. We are not responsible for the refusal or failure of any Merchant or Participating Merchant to accept Your Card(s). A Card(s) must be presented at the time of purchase. Certain features or controls ("Controls") may be available when Using Your Card(s). Such Controls include, but are not limited to, Personal Identification Number (PIN) entry, daily fuel or merchandise purchase limits or other options that may be made available from time to time. The availability and effectiveness of Controls is dependent upon each Merchant's adoption of card specifications and the information, including product codes, transmitted to Us by them. The product codes are assigned by each Merchant, and as such, We have no responsibility for inappropriate product code assignment. You understand and acknowledge that only transactions submitted to Us for authorization are subject to Controls and that those Controls can only be enforced when the Merchant provides sufficient information as part of the authorization. Some Controls may not work at all locations, fueling points, or POS terminals. We reserve the right to modify Controls when those Controls, in Our opinion, are set at a level such that they are ineffective or not in accordance with the goals of the Controls program. Default values for Controls may be assigned by Us unless You make Your own election(s). We shall not be responsible for the prudence of any particular Control level You select. Controls such as a PIN, and in some instances, a driver number or other information from Your employee/driver, will be required to authorize each purchase. At Your request, We may in Our sole discretion



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issue an Account that does not require a PIN. If You are issued a non-PIN required Account, We may require You at any time to change to a PIN required Account. Additionally, driver numbers and other information may be selected by You or provided to You prior to the time Card(s) are issued. This information may be changed upon Your request during the life of the Account. When You use Your Card(s) or permit someone else to have access to Your Card(s) or Account number, PIN, or driver number, You promise to pay all charges, along with all related Interest Charges and other fees accruing under this Agreement, including charges You may not have intended that person to make. The existence and/or use of Controls may not lessen Your liability for unauthorized use of Cards. You agree that You will promptly review reports provided by Us, for the purpose of detecting fraud that occurs within Control parameters. It is Your responsibility to notify Us of Your revocation of any person or user's authority to use or access Your Account, Cards, or PINs. You will remain liable to Us for any charges until such time as We receive notice. You agree that use of a Card and the applicable PIN will constitute authorized use for all purposes. You agree to keep Card(s) secure and PINs confidential. You agree to ensure that Your employees do not disclose any PINs. If You or Your employee discloses a PIN or writes a PIN on a Card, You are liable for any fraudulent use that may result even if the disclosure is inadvertent or unintentional. Generally, You may use Your Card(s), and authorize Your employees/drivers to use Your Card(s), to purchase fuel, merchandise, services, and other permissible items. However, (a) at Our sole discretion, (b) the discretion of the Merchant, or, in some instances (c) at Your discretion, a purchase may not be permitted. We may suspend or terminate any Account or Card at any time. You agree that the Card(s) issued to You will be used strictly for business or commercial purposes, and not for any personal, family, or household use. You agree not to use Your Card(s), and not to permit Your employees/drivers to use Your Card(s), for any unlawful purpose or in any illegal transaction(s).

Account Administration and Reporting. You will provide us written notice of: a) any action by You to consolidate, merge or sell a substantial part of Your assets; b) Your intent to undertake a change in Your legal structure; or c) the departure or separation from Your business of any guarantor on Your Account. You will provide Us with prompt written notice if any guarantor of this Agreement is rendered incapacitated or is unable to perform for any reason. The Fleet Contact Person, or another person or persons designated by the Fleet Contact Person, is authorized by You to: a) provide Us with the information necessary to establish and maintain Your Account, Cards, and PINs; b) provide all fleet vehicle, driver and other information that We may request; c) receive all Cards and reports; d) receive other Account information We may provide; and e) select additional products and/or services that We offer. You further agree that additions, updates, and deletions of vehicles, drivers, and Fleet Contact Persons placed by telephone or electronically, and accepted by Us, are binding on You. You will provide Us with advance written notice of any change in or removal of any Fleet Contact Person. You will remain liable to Us for any unauthorized actions taken by Your Fleet Contact Person until You notify Us of any change in or removal of such Fleet Contact Person. We are also authorized to deal with any contact person with apparent authority to act on Your behalf. As a part of Our products and services, We provide purchase information, vehicle analysis information and other management reporting information, in either paper or electronic format. This information may include details relating to Your use of Card(s) based upon charges and information reported to Us. You are responsible for reviewing this information for accuracy and completeness. We cannot guarantee the accuracy or completeness of this information. You understand and agree that, regardless of any errors in this information, You remain responsible and liable for any and all charges.

Extension of Credit; Credit Line. We may require You to maintain funds under Our control as a condition of issuing credit on Your Account per the Valero Fleet Services Account Security Agreement. The total amount of credit that may be extended on Your Account shall be determined, and may be changed at any time, by Us in Our sole discretion. We may establish or change a credit line ("Total Credit Line") for Your Account from time to time. Your Total Credit Line may be shown on the initial Card(s) mailer or other correspondence and on each periodic billing statement ("Statement"). If We accept a payment for an amount in excess of Your entire



FTC 08/15

unpaid balance ("New Balance"), Your Total Credit Line will not be increased by the amount of such overpayment nor shall We be required to authorize transactions for an amount in excess of Your Total Credit Line. Authorization and acceptance of such transactions shall be determined by Us at Our sole discretion. We may, in Our sole discretion, honor transactions that exceed Your Total Credit Line, but We do not consider such transactions to be a request to increase Your Total Credit Line. If We have previously honored transactions in excess of Your Total Credit Line, that does not mean that We will honor further transactions in excess of Your Total Credit Line. We may allow You the ability to administer limits per Card(s) or by employee/driver at Our discretion. Examples of such limit(s) which may be administered are a daily limit, weekly limit, monthly limit, special limit, etc. If such limit(s) are in effect, You may notify Us if You wish to change or terminate them. We will attempt to implement and enforce such limit(s) but We will not be liable for any failure to do so.

Payment Terms. We will provide You a statement of Your Account at approximately monthly intervals (Statement) if there has been activity on Your Account, or there is a balance (credit or debit) in Your Account exceeding \$1, unless We deem Your Account to be uncollectible, or We have instituted delinquency collection procedures, or furnishing the statement would violate law. You promise to pay Us the amounts of all credit You obtain (including all Purchases), all fees and charges We assess against Your Account and all Interest Charges as provided in this Agreement. You agree to make Your payments in the amounts and at the times provided in this Agreement. **You may pay any amount up to the entire unpaid balance (the "New Balance") of Your account at any time.** You must pay each billing cycle at least the Minimum Payment Due amount shown on Your Statement by the Payment Due Date shown on the Statement. We will also include in Your Minimum Payment Due any part of the New Balance in excess of Your Total Credit Line. The Minimum Payment Due will never be more than the New Balance. If You want to request a change to Your Payment Due Date, please call or write Us. It may take up to two billing cycles to process such a request. You must pay the Minimum Payment Due by the Payment Due Date on the Statement at the address provided. Failure to pay the Minimum Payment Due by the Payment Due Date may result in Interest Charges and/or a Late Fee, as described in this Agreement, forfeiture of applicable discounts and cancellation or interruption of charging privileges. We will allocate Your payments to amounts due on Your Account in accordance with law and in the manner We determine, without regard to any instructions You may provide. We will allocate Your Minimum Payments to balances (including new transactions) with higher Annual Percentage Rate's (APR's) before balances with lower APR's. This will result in balances with a higher rate of interest being paid before any other existing balances. Even though Your payment may be credited to Your Account in the billing cycle in which the payment is received, Your available credit may not be increased by the amount of the payment allocated to principal until Your payment has cleared. All payments must be made in U.S. dollars. If You agreed to certain pre-authorized payments (Automatic Payment Withdrawal(s)) We will deduct the payment(s) from Your deposit account according to instructions You provide on the Valero Fleet Services Automatic Payment Withdrawal Form. If You overpay, or if a credit balance is otherwise created in Your Account, We will not pay interest on such amounts. If You post-date a check for payment, We may process the check immediately upon receipt or return it unpaid, at Our election, without in either case waiting until the date shown on the check. We are not liable to You for any loss or expense incurred by You arising out of the action We elect to take. **We may accept payments marked "Payment in Full" or with words of similar effect without losing any of our rights to collect the full balance of Your Account.** Any payments marked "Payment in Full" or with similar words must be sent to the following address: PO Box 631, Amarillo, TX 79105-0631, and We reserve all rights with respect to any such payments. Except where prohibited by law, satisfaction of Your Account balance for less than the New Balance requires written agreement signed by one of Our authorized employees. Except to the extent permitted by law, You cannot disclaim responsibility of payment even though an agreement, divorce decree, or court judgment to which We are not a party may affect You or any other person or entity with responsibility to pay. We reserve the right to change, modify, suspend or discontinue any payment method We may offer such as pay by phone or Electronic Funds Transfer (EFT) draft at any time



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FTC 08/15

without prior notice. If We do, You can make Your payment by mailing Your payment to PO Box 300, Amarillo TX 79105-0300.

Minimum Payment Due.

The Minimum Payment Due will be calculated using the revolving credit method unless prohibited by law or unless Your account is not eligible for revolving credit. If this is the case, Your Minimum Payment Due will be calculated using the non-revolving credit method.

Revolving credit: The Minimum Payment Due each billing cycle is the greater of (1) the sum of: (a) all past due amounts, plus (b) 1/6th (one-sixth) of the New Balance of Your Account at the end of the billing cycle, plus (c) the amount of any Account fees and Interest Charges posted to Your Account during the billing cycle, or (2) \$25. However, if the New Balance is less than \$25, the Minimum Payment Due is the entire New Balance. We will also include in Your Minimum Payment Due any part of the New Balance in excess of Your Credit Limit.

Non-revolving credit: The Minimum Payment Due each billing cycle is the New Balance of Your account at the end of the billing cycle, which, if applicable, includes the amount of any Account fees and Interest Charges posted to Your Account during the billing cycle.

Interest Charges.

When Periodic Rate Interest Charges Begin to Accrue. Periodic rate Interest Charges will accrue daily on Purchases from the date that the transaction was posted to Your Account until the date each Purchase is completely repaid according to the payment allocation method then in effect. However, if the New Balance shown on the Monthly Statement for the previous billing cycle was a credit balance or zero or was paid in full by its Payment Due Date, then (1) We will not charge periodic rate Interest Charges during the current billing cycle if You pay the New Balance, if any, shown on the Monthly Statement for the current billing cycle by its Payment Due Date, and (2) We will credit any payment You make by the Payment Due Date for the current billing cycle as of the first day of the billing cycle.

Rate of Interest Charges. The rate of Interest Charges is determined by the state in which You receive Your billing statement. The Monthly Periodic Rate and corresponding Annual Percentage Rate are shown in the *Valero Fleet Services Interest Charge and Fee Schedule* ("Schedule"), which is at the end of this Agreement.

Calculating the Interest Charge. The balance method used to calculate the Interest Charge is determined by the state in which You receive Your billing statement. The balance method is shown in the Schedule. See below for a description of how We calculate the balance method used to calculate the Interest Charge applicable to Your account. If You reside in a state where We use the "average daily balance" method to calculate the Interest Charge, We apply the periodic rate to the "average daily balance" of Your Account. If You reside in a state where We use the "adjusted daily balance" method to calculate the Interest Charge, We apply the periodic rate to the "adjusted daily balance".

Calculating the Average Daily Balance. To get the "average daily balance", We take the beginning balance of Your Account each day, add any new purchases and fees, and subtract any payments or credits, and unpaid Interest Charges. Credit balances are treated as zero balances. This gives Us the daily balance. Then, We add up all the daily balances for the billing cycle and divide the total by the number of days in the billing cycle. This gives Us the "average daily balance".

Calculating the Adjusted Balance. We get the "adjusted balance" by taking the balance You owed at the end of the previous billing cycle and then We subtract any unpaid Interest Charges and any payments and credits received during the present billing cycle.



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Other Fees and Charges. We will assess fees and charges in the amounts listed in this section and the *Valero Fleet Services Interest Charge and Fee Schedule*. We may elect to waive any fees at Our sole discretion. Our fees include:

Fleet Management Report Fee. We may provide You with Fleet Management Reports ("Reports") and We may charge a fee for this service. The Reports contain data transmitted to Us by Merchants and, if applicable, Your employees or drivers. We will attempt to ensure the accuracy of the Reports, but We do not guarantee their accuracy, and shall not be in any way responsible or liable for any damage resulting from any inaccuracy in any Report.

Late Payment Fee. If You do not pay the Minimum Payment Due by the Payment Due Date shown on a Statement, We may assess a Late Fee in the amount shown in the Schedule, based on the state of Your billing address. For states where the Late Fee is equal to a percentage, We apply that percentage to the total amount past due on Your Account at the time the fee is assessed, less any previous Late Fees or Interest Charges. We will not assess a Late Fee for an amount greater than the past due amount.

Returned Payment Fee. If Your payment, whether by check, electronic draft or otherwise, is not honored for its full amount by Your bank for any reason, We may assess a Returned Payment Fee in the amount shown in the Schedule, based on the state of Your billing address and subject to applicable law.

Miscellaneous Fees. If You request certain program options, transaction information, services or maintenance on Your Account, additional fees may apply. These fees include, but are not limited to account maintenance fees, statement reprint fees or invoice copy fees, overnight mailing fees, or additional Card(s) fees. The amount of these fees will be disclosed to You when You request the service.

Returns and Adjustments. Credits to Your Account from any return or adjustment may be applied, in Our discretion, to Your New Balance or future Purchases.

Tax Exemptions. Any person or entity that claims tax exempt status must provide proof of such exemption. Such exemptions may or may not be recognized by Us and any recognition is subject to change or revocation at any time. You agree to pay or reimburse Valero any monies for which an exemption was recognized and the exemption was rejected by the taxing authority.

Liability for Unauthorized Use. You will promptly notify Us of the loss, theft, or unauthorized use of any Card(s) or Account by calling Us at 1-877-882-5376 or writing to Us at PO Box 631, Amarillo, TX 79105-0631. You agree to provide written confirmation of any notice if requested by Us. Subject to any limitations imposed by law, You will be liable to Us for all unauthorized use of a Card that occurs before Your notification of such unauthorized use. You will not be liable for any unauthorized use that occurs after You have notified Us, provided that, and subject to any limitations imposed by law, the unauthorized use is not the result of Your lack of reasonable controls and does not result in a benefit, directly or indirectly, to You.

What To Do If You Think You Find An Error On Your Statement. If You think there is an error on Your Statement, write to Us at PO Box 631, Amarillo, TX 79105-0631. You may also contact Us by calling 1-877-882-5376 or by emailing Us at fleet@valero.com. We will need the following information: Your name and Account number and a description of the problem. You must contact Us within 60 days after the error appeared on Your Statement. While an error is being investigated, any amount(s) in question may remain on Your Statement and We may continue to charge You interest on that amount. After We finish Our investigation, We will tell You Our decision. If We determine that an error occurred, We will correct Your Account and notify You. If We think You owe an amount and You do not pay, We may report You as delinquent.



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Your Rights If You Are Dissatisfied With Your Credit Card(s) Purchases. If You are dissatisfied with the goods or services that You have purchased with Your credit Card(s), You must contact the Merchant. You are responsible for payment in full of all charges made at any location(s) with a valid Card(s) and that are processed by Us.

Change of Terms. We may add, delete, or change the terms of this Agreement ("Change") at any time, including changes in the Interest Rates (APR) or fees. We will give You a notice of change as required by law. To the extent permitted by law, a Change may apply to all amounts outstanding on Your Account at the time the Change goes into effect. We may provide any notice under this Agreement to You electronically if permitted by law.

International Use of Cards/Currency Conversion. Our Cards are issued for use by Our United States based operations and United States based Merchants. You may not distribute Card(s) to employees based in countries other than the United States. Your Purchases will be billed in U.S. Dollars. If, however, We expand Our Valero Fleet Services into any country outside of the United States and allow use of the Card(s) in such country, You (i) may distribute Card(s) to employees based in that country; (ii) will be billed in U.S. Dollars; (iii) will receive reporting in English; and (iv) acknowledge that We will provide You a Currency Conversion Fee Schedule prior to Our acceptance of Your Purchases from such country. We will convert any Purchase made in a foreign currency into a U.S. Dollar amount on the date the Purchase is posted to the Account. The exchange rate between the Purchase currency (the foreign currency) and the billing currency (U.S. Dollars) used for processing international Purchases is a rate selected by Us using rates available in wholesale currency markets for the date that the Purchase is posted by Us and this rate may differ from a rate applicable to Us or We may use the government mandated rate in effect at that time. The exchange rate used may differ from rates that are in effect on the date of Your Purchase. Fluctuations can be significant.

Force Majeure; Limits on Liability; Security. We shall not be responsible to You for losses or damages resulting from the malfunction or non-function of Card(s) because of fire, electrical failure, communication line failures, terminal malfunction, labor dispute, act of God or other event beyond Our control. In no event shall We be liable, in contract, tort or otherwise for incidental, consequential, special or indirect damages. Certain products and services offered to You by Us may be accessed by You through the Internet. Although We use security methods for Our online products, security cannot be guaranteed. We disclaim all liability for any security breaches of online communications or for any electronic, computer or other system failures. We are not liable to any person for loss, liability or damages, including consequential or special damages, arising out of any security breaches or system failures or any other defect of the electronic online communication procedures, including loss due to data modification or destruction.

Our Right to Require Immediate Payment; Default; Collection Costs. We may decline to extend further credit to You or require immediate payment of all amounts You owe Us without notice or demand under certain circumstances, including but not limited to when (1) You make a payment that is returned unpaid, (2) You fail to pay any amount owed under this Agreement exactly when due, (3) You exceed Your Total Credit Line, (4) You fail to abide by any other term of this Agreement, (5) You default on any other credit obligation You have with Us, (6) Your ability to pay Us is materially impaired (including, without limitation, if You file or have filed against You as debtor a proceeding under any chapter of the Bankruptcy Code), or (7) Your legal or ownership status changes. No rights, duties, or obligations arising prior to the termination of credit by Us shall be impaired by such termination. If You are in default, unless prohibited by applicable law, You also must pay Us or reimburse Us for all costs and disbursements, including reasonable attorney's fees, incurred by Us in legal proceedings (including bankruptcy proceedings) to collect or enforce the debt.



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ETC 06/15

No Bankruptcy/Litigation. By accepting this Agreement, You represent that You do not contemplate and have not filed any petition for bankruptcy protection and there has been no involuntary petition threatened or filed against You. You do not anticipate filing any such bankruptcy petition and do not anticipate that an involuntary petition will be filed against You. To Your knowledge there is no action, suit or investigation pending or threatened against You or any of Your assets before any court or governmental authority which, if determined adversely to You, would have a material adverse effect on Your business.

Call Monitoring and/or Recording. By accepting this Agreement and acknowledging Our commitment to customer service, You consent to and authorize Us, any of Our affiliates, and Our marketing associates to monitor and/or record (unless prohibited by law) telephone conversations with Our representatives or the representatives of any of such companies. You also agree to notify Your employees who may be in telephone contact with Our representatives that monitoring and/or recording of conversations will occur.

Automatic Reminders. We may use automated telephone dialing, text messaging systems and email to provide messages to You about Your Account. The telephone messages may be played by a machine automatically when the telephone is answered, whether answered by You or another party. These messages may also be recorded by Your answering machine or voice mail. You give Us permission to call or send a text message to any telephone number which You have given Us and to play pre-recorded messages or send text messages with information about this Agreement or Your Account over the phone. You also give Us permission to communicate such information to You via email. You agree that We will not be liable to You for any such calls or electronic communications, even if information is communicated to an unintended recipient. You understand that, when You receive such calls or electronic communications, You may incur a charge from the company that provides You with telecommunications, wireless and/or Internet services. You agree that We have no liability for such charges.

Assignment. You agree that We may at any time assign Your Account, any sums due on Your Account, this Agreement, or any of Our rights or obligations under this Agreement to another person or entity without Your consent or notice to You. The person or entity to whom We make any such assignment shall be entitled to all of Our rights under this Agreement, to the extent assigned. You may not assign Your rights or obligations under this Agreement.

Change of Ownership or Mailing Address; User Information. You must notify Us immediately of any change of ownership or change to Your business name or mailing address from that shown on Your latest periodic billing statement. Name and ownership change requests or change to mailing address must be submitted *in writing* to PO Box 631, Amarillo, TX 79105-0631. You also agree to keep Your email address and other Account information current. If You use any of Our system(s), You agree to provide true, accurate, current and complete information as requested and You agree not to misrepresent Your identity. You bear the burden of any legal, regulatory, or other requirements, and any penalties and fees that may be assessed by supplying false information to Us. You agree to use Our system(s) only for bona fide and lawful purposes. We have the right to terminate Your access to such system(s) and You agree that We will not be held responsible or liable to You or any other person for such action.

Credit Information. You agree that We may make credit inquiries about Your business, and You, personally, if You are a sole proprietor or extend a personal guaranty. We may make these inquiries in connection with Your application, and for ongoing review, servicing, and collection of Your Account. We may furnish information relating to this Account in response to credit inquiries from others and to credit reporting agencies. We may report information about Your Account, and You, personally, if You are a sole proprietor or extend a personal guaranty, to credit reporting agencies. Late payments, missed payments, or other defaults on Your



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Account may be reflected in Your credit report. If You believe that any information We furnish to a credit reporting agency about Your Account is inaccurate, please write Us at PO Box 631, Amarillo, TX 79105-0631. Include a copy of the report, if You have one, and a description of the information that You believe is inaccurate.

Severability: No Waivers. Except as set forth in the Arbitration Provision, if any part of this Agreement is found to be invalid, the rest remains effective to the fullest extent allowed by applicable law. Any failure or delay by Us in exercising any of Our rights or remedies under this Agreement or under applicable law does not mean that We will not be permitted to exercise those rights or remedies later. We may accept late payments or partial payments without losing any of Our rights or remedies.

Governing Law (Not applicable to Arbitration Provision). This Agreement and Your Account are governed by the laws of the state where Your billing address is located, without regard to its conflict of laws/principles and the parties expressly consent to the exclusive jurisdiction of such courts for the resolution of any disputes under this Agreement. Each party waives any objection to venue and any objection based on forum non conveniens in any such court. To the extent, if any, that Maryland law applies to this Agreement, We elect the Credit Grantor Closed-End Credit Provisions in Title 12, Subtitle 10 of the Commercial Law Code.

Termination of Agreement. This Agreement may be terminated at any time by Your written notice to Us. No such termination shall affect Your obligations existing prior to such termination or Your responsibility for charges made by You or Your employees/drivers after such date of termination. We may suspend or terminate Your Account and this Agreement at any time.

BINDING ARBITRATION PROVISION.

YOU SHOULD READ THIS ARBITRATION PROVISION CAREFULLY. IT MAY IMPACT YOUR RIGHT TO HAVE CLAIMS RELATED TO THE ACCOUNT HEARD IN COURT OR RESOLVED BY A JURY, AND TO PARTICIPATE IN A CLASS ACTION OR SIMILAR PROCEEDING.

Any claim, dispute, or controversy (whether based on contract, tort, statute, or otherwise, and whether seeking monetary or any form of non-monetary relief such as equitable or declaratory relief) arising from or relating to Your Account, any prior account, the Card(s), this Agreement or the relationship between You and Us (collectively, "Claims"), upon the election of You or Us, will be resolved by binding arbitration on an individual basis pursuant to this Arbitration Provision and the applicable rules and procedures ("JAMS Rules") of JAMS ("JAMS") in effect when the Claim is filed. If JAMS cannot serve and the parties cannot agree on a substitute, a court with jurisdiction will select the arbitrator.

For purposes of this Arbitration Provision: (A) the terms "We", "Us", and "Our" mean (1) Valero Marketing and Supply Company, any servicer or subsequent holder of Your Account or the amounts due under Your Account, and all of their respective parents, subsidiaries, affiliates, predecessors, successors, assigns, agents, employees, officers, and directors, (2) any Merchant that honors Your Card, and (c) any other person or entity named as a defendant or respondent in a Claim asserted by You against Us; and (B) the terms "You" and "Your" mean (1) the company or person(s) who applies for and accepts the Card or Cards issued on Your Account, and (2) any person claiming through You, such as a guarantor, employee or authorized user. The term "Claims" is to be given its broadest possible meaning, and includes pre-existing, present, and future Claims. However, the term "Claim" does not include: (i) disputes about the validity, enforceability, coverage or scope of this Arbitration Provision or any part thereof, which are for a court to decide. But disputes about the validity or enforceability of the Agreement as a whole are for the arbitrator to decide, and (ii) any individual action by You or Us in small claims or an equivalent court, unless that action is transferred, removed or appealed to a different



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FTC 08/15

court. A party who has asserted a Claim in a lawsuit in court may elect arbitration with respect to any Claim(s) subsequently asserted in that lawsuit by any other party.

IF EITHER YOU OR WE ELECT ARBITRATION: (i) NEITHER YOU NOR WE WILL HAVE THE RIGHT TO LITIGATE IN COURT THE CLAIM BEING ARBITRATED, OR TO ENGAGE IN PRE-ARBITRATION DISCOVERY EXCEPT AS PROVIDED IN THE JAMS RULES, (ii) NEITHER YOU NOR WE WILL HAVE THE RIGHT TO PARTICIPATE AS A REPRESENTATIVE OR MEMBER IN ANY CLASS ACTION, REPRESENTATIVE ACTION, PRIVATE ATTORNEY GENERAL ACTION, OR SIMILAR ACTION IN COURT OR IN ARBITRATION and (iii) YOU WILL NOT BE PERMITTED TO JOIN OR CONSOLIDATE YOUR CLAIMS WITH THOSE OF ANY OTHER PERSON EXCEPT AS SET FORTH BELOW. THE ARBITRATOR'S DECISION WILL BE FINAL AND BINDING, EXCEPT FOR ANY APPEAL RIGHTS UNDER THE FAA. OTHER RIGHTS AVAILABLE TO YOU IN COURT MAY NOT BE AVAILABLE IN ARBITRATION. YOU EXPRESSLY WAIVE YOUR RIGHT TO A JURY TRIAL FOR ALL CLAIMS BEING ARBITRATED.

You can obtain the JAMS Rules and forms by calling JAMS at (949) 224-1810 or toll-free at 1-800-352-5267, by visiting JAMS's Website at www.jamsadr.com or by writing to JAMS at 1920 Main Street, Suite 300, Irvine, CA 92614. Any arbitration hearing, if one is held, will be held in the federal judicial district where You live. To start an arbitration proceeding, the complaining party files an arbitration Demand as explained in the JAMS Rules. If one party begins or threatens a lawsuit concerning a Claim, the other party can file a motion to compel arbitration with the court. If the court grants the motion, the Claim must be resolved in arbitration. Filing, administrative and arbitrator fees and costs will be paid by the parties in accordance with the JAMS Rules or as otherwise agreed to by the parties or determined by the arbitrator. Each party shall bear the expense of their respective attorneys, experts, and witnesses and other expenses, regardless of who prevails, but a party may recover any or all expenses from another party if the arbitrator, applying applicable law, so determines. The arbitrator will not have the power to conduct any proceeding as a class action, representative action, private attorney general action, or similar action. The arbitrator will have the power to decide only Your and Our Claims against each other, and will not have the power to join other parties or consolidate other Claims with the Claims between You and Us; provided, however, that joint applicants or cardholders of the same Account may be joined in a single proceeding.

This Arbitration Provision is made pursuant to a transaction involving interstate commerce, and will be governed by the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 et seq., as amended, notwithstanding any choice-of-law provision in the Agreement. The arbitrator will apply applicable substantive law consistent with the FAA and applicable statutes of limitations and will honor claims of privilege recognized at law. The arbitrator may award all remedies that would apply in an individual court action (subject to constitutional limits that would apply in court). At the request of either party prior to entry of an award, the arbitrator will provide a written explanation of the basis for the award. Judgment upon any arbitration award may be entered and enforced, including without limitation by garnishment, attachment, foreclosure or other post-judgment remedies, in any court having jurisdiction. The arbitrator's decision will be final and binding, except for any right of court review provided by the FAA or state law, if applicable.

This Arbitration Provision will survive payment or transfer of the Account or the termination of this Agreement or the relationship between You and Us, or the bankruptcy of either You or Us if applicable law permits. If any portion of this Arbitration Provision other than the provision precluding the arbitrator from having the power to conduct any proceeding as a class action, representative action, private attorney general action, or similar action is deemed invalid or unenforceable, it will not invalidate the remaining portions of this Arbitration Provision. However, if the provision precluding the arbitrator from having the power to conduct any proceeding as a class action, representative action, private attorney general action, or similar action is deemed invalid or



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unenforceable in a proceeding between You and Us, then this entire Arbitration Provision (except for this sentence) shall be deemed unenforceable in such proceeding, without impairing the right to appeal such decision. If a conflict or inconsistency arises between the JAMS Rules and this Arbitration Provision, or between the Agreement and this Arbitration Provision, this Arbitration Provision will control.

NOTICE TO THE BUYER: 1. DO NOT SIGN THIS CREDIT AGREEMENT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACE. 2. YOU ARE ENTITLED TO A COMPLETELY FILLED IN COPY OF THIS AGREEMENT. 3. IF YOU DO NOT WANT THIS AGREEMENT TO BECOME EFFECTIVE, THEN DO NOT USE THE CARD(S).



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